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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,896	04/27/2001	Masaharu Hayashi	0425-0836P	7584
2292 7590 07/17/2009 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
PRYOR, ALTON NATHANIEL				
ART UNIT		PAPER NUMBER		
1616				
NOTIFICATION DATE		DELIVERY MODE		
07/17/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

09/842,896

Applicant(s)

HAYASHI ET AL.

Examiner

ALTON N. PRYOR

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10, 16, 18, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10, 16, 18, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Applicant's arguments filed 3/23/09 have been fully considered but they are not persuasive. See argument below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/02451 (or the English equivalent CA 23375354 as noted by Applicants); 1/20/00. WO '451 teaches a composition comprising Magic West fatty esters having 10 to 24 carbon atoms (instant fatty acid ester where $n = 0$) plus the surfactant APG. WO '451 teaches compositions comprising fatty acid ester (Magic West) in 10, 100 and 150 ppm concentrations (abstract, page 7 1st full paragraph, Tables 6-10). WO '451 teaches that the composition is applied to plants (abstract). CA '233 at page 7 line 20 – page 8 line 15 teach that the fatty acid contains 1—24 carbon atoms which corresponds to C12-20 monocarboxylic acids. Applicants argue that in WO '451 Magic West fatty acid esters are applied to plants for the purpose of plant-strengthening and plant rehabilitating effect as opposed to a method of activating the plant as instantly claimed. The Examiner would like to point that both instant invention and WO '451 teach a step of applying the same active (Magic West fatty acid esters) to plants. Therefore it is inherent that both

WO '451 and instant invention would yield the same result, i.e. plant-strengthening and plant rehabilitating effect as well as plant activation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 18 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO '451 as applied to claims 10 and 30. WO '451 teaches all that is recited in claims 16, 18 and 31 except for the composition comprising surfactants specified in claim 31 and instant concentration of fertilizer or plant nutrient specified in claims 16 and 18. However, WO '451 teaches that a fertilizer can be added to the composition (page 16). It would have been obvious to determine the optimum amount of fertilizer to include in the composition. One would have been motivated to do this in order to make a composition effective at promoting plant growth. With respect to the surfactants specified in claim 31, the surfactants are commonly used in the plant treatment art for the purposes of promoting spreadability of the composition onto the plant and/or penetration of the composition into the plant parts. In the absence of unexpected results for particular surfactant(s), it would have been obvious to exchange one surfactant for another.

Claims 10 is rejected under 35 U.S.C. 102(b) as being obvious over DE 4445546; 6/27/96. DE '546 teaches a composition comprising C12 fatty ester Ia (instant fatty acid ester where $n = 0$) which yields a lauric fatty acid ester. DE '546 teaches compositions comprising the lauric fatty acid ester Ia in 12.5 and 300 ppm concentrations (page 6 line 53 – page 8 line 40). DE '546 teaches that the composition is applied to plants (page 6 line 53 – page 8 line 40). DD '456 differs from instant claims in that instant claims disclose a C13 fatty acid ester as opposed to the instantly claimed C12 fatty acid ester. It would have been obvious at the time of DE '546 invention to employ the C13 fatty acid ester in place of the C12 fatty acid ester, because the C12 and C13 fatty acid esters are homologs. Homologs have similar chemical and physical properties therefore are expected to yield a similar result when employed in the same application method.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616

Application/Control Number: 09/842,896
Art Unit: 1616

Page 6